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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF VIRGINIA
4 ALEXANDRIA DIVISION

4 UNITED STATES OF AMERICA,)
5 v.) Docket No. 1:11-mj-558
6 SYED GHULAM NABI FAI,) Alexandria, Virginia
7 Defendant.) July 26, 2011
8) 5:00 p.m.
9)

10 TRANSCRIPT OF HEARING
11 BEFORE THE HONORABLE JOHN F. ANDERSON
12 UNITED STATES MAGISTRATE JUDGE
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21 APPEARANCES:

22 For the United States: Gordon D. Kromberg, Esq.
23 John Gibbs, Esq.
24 For the Defendant: Nina J. Ginsberg, Esq.
25 Khurrum Wahid, Esq.
Syed Ghulam Nabi Fai, in person

P R O C E E D I N G S

THE CLERK: *United States v. Syed Ghulam Nabi Fai.*
Case No. 11-mj-558.

MR. KROMBERG: Good afternoon, Your Honor. Gordon Kromberg for the United States. With me at counsel table is John Gibbs from the Department of Justice, National Security Division, and FBI Special Agent Sarah Linden.

THE COURT: Okay. Thank you.

MS. GINSBERG: Good afternoon, Your Honor. Nina Ginsberg and Khurrum Wahid on behalf of Dr. Fai.

I would preliminarily move Mr. Wahid's mission *pro hac vice*. The application and fee have been filed with the court. He's previously been admitted to this court on a *pro hac vice* basis and is admitted to the bars of the states of Florida and New York. He's well qualified to practice in this court.

THE COURT: Okay. I've granted that -- or signed that order allowing him to appear in the case.

Okay. So we're here for a hearing as to whether there's probable cause for the charge that's been brought against the defendant and on the issue of detention; is that correct?

MR. KROMBERG: That's correct, Judge.

I believe that we have -- the parties have agreed that there's going to be a waiver of the probable cause hearing and we're going to go ahead with the detention hearing.

1 MS. GINSBERG: That is correct, Your Honor. We've
2 executed a waiver.

3 THE COURT: Thank you. Sir, based on the information
4 that was contained in the affidavit in support of the criminal
5 complaint and also on the waiver form that you and your counsel
6 have signed, I am finding that there is probable cause for the
7 charge that's been brought against you. So the case will be
8 proceeding as charged at this time.

9 I'm now going to hear some evidence and arguments on
10 the issue of detention. Thank you.

11 Okay. Mr. Kromberg.

12 MR. KROMBERG: Your Honor, the government relies on the
13 information in the criminal complaint. We'd also like to
14 proceed by proffer with respect to some statements that were
15 made by Mr. Fai after his arrest on July 19th.

16 In essence, what happened was that Mr. Fai admitted to
17 Special Agent Linden, who's here, that for the last 15 years
18 he's been affiliated with the ISI, the Pakistani intelligence
19 service. The handlers, the ISI handlers that were listed in the
20 criminal complaint were his handlers. He admitted that he
21 submitted budgets to his handlers every year, and each year the
22 ISI either approved his budgets or partially approved his
23 budgets.

24 He agreed -- he agreed that an ISI employee gave money
25 to Zaheer Ahmad who for arranged Zaheer Ahmad's contacts in the

1 United States to give the money to Fai. He agreed that the ISI
2 directs him, Mr. Fai, to go to certain conferences and to report
3 on certain people, including some that were mentioned in the
4 criminal complaint. Finally, that he said that he has never
5 told the board of directors of the Kashmiri American Council
6 that he's supported and funded by the ISI.

7 That's all the -- that's all the proffer I'd like to
8 make, Judge. I will -- for purposes of -- do you want to hear
9 argument at this point?

10 THE COURT: Well, let me just hear if there are any
11 proffers or evidence that the defendant wants to make at this
12 time, and then I'll hear your argument and then their argument.

13 MR. WAHID: Your Honor, would it be okay if we call the
14 agent for me to ask her a few questions?

15 THE COURT: Sure.

16

17 SARAH LINDEN,
18 after having been duly sworn or affirmed,
19 took the stand and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. WAHID:

23 Q. Can you state your name, Agent.

24 A. My name is Sarah Linden, L-I-N-D-E-N.

25 Q. And you submitted a lengthy affidavit in support of the

1 charges in this case, correct?

2 A. Yes, that's correct.

3 Q. Okay. Were you also present during the questioning of

4 Dr. Fai post-arrest?

5 A. Yes.

6 Q. All right. First of all, the term handlers, had he ever

7 referred to anyone at the ISI as handlers?

8 A. Until the time of our interview post-arrest, he had never

9 admitted to me that he was affiliated with the ISI, but the

10 question I asked him was about his handler specifically and he

11 did not correct my terminology.

12 Q. All right. But that was your word?

13 A. Yes.

14 Q. Okay. Now, a portion of your affidavit is based upon

15 information collected from two confidential informants; is that

16 correct?

17 A. Yes, that's correct.

18 Q. One of the confidential informants in fact received a

19 benefit for his information, correct?

20 A. Yes, that's correct.

21 Q. And that benefit was a reduced jail sentence?

22 A. Yes.

23 Q. Are you aware of how much time that informant actually got

24 in jail?

25 A. I'm not aware of the exact amount, but I think it was in the

1 order of five or six years.

2 Q. Okay. Are you aware how much time that person could have
3 gotten in jail without that cooperation?

4 A. I think his sentence was shortened by roughly 18 months, but
5 I don't know the exact number.

6 Q. That informant, I believe it's CW-1 in your affidavit,
7 provided information to you based upon a relationship with
8 Dr. Fai that ended in 1998. Is that accurate?

9 A. I think that is accurate, yes.

10 Q. Where there was a breakdown between the relationship with
11 one of the straw donors and at that time the relationship with
12 Dr. Fai also ended?

13 A. Yes, that's correct.

14 Q. So no relevant information could have been provided to you
15 by that informant, CW-1, after 1998? They wouldn't have had any
16 contact after that?

17 A. I don't believe they had any contact after 1998. That's
18 correct.

19 Q. The second informant, known as CW-2, you state in paragraph
20 15 that that informant estimated 80 percent of Dr. Fai's
21 statements are from the ISI for Dr. Fai to repeat verbatim.

22 Does that sound correct?

23 A. Yes, that's correct.

24 Q. And have you ever tried in your --

25 THE COURT: We're here on the issue of detention.

1 MR. WAHID: Yes, Your Honor.

2 THE COURT: I just want to make sure we're focusing on
3 the issues of detention and not probable cause now that we've
4 made a determination on that. Okay.

5 MR. WAHID: Yes, Your Honor. This just goes to the
6 accuracy of the witnesses that are the basis of the affidavit.

7 BY MR. WAHID:

8 Q. Had you ever tried to ever corroborate that allegation by
9 CW-2 that -- have you ever tried to review Dr. Fai's public
10 statements to see if in fact 80 percent of what he is saying is
11 in line with the government of Pakistan's policies?

12 A. My review of the information that ISI provided Dr. Fai
13 showed that rather than giving him verbatim paragraphs of text,
14 they tended to give him bullet points or precise titles for
15 panels they wanted him to participate in or sponsor at various
16 conferences.

17 I don't think I can give you a percentage, but I will say
18 that a large number of the things he did write and the panels he
19 did sponsor adhere very closely to what ISI asked him to.

20 Q. Based on your review, would you agree that Dr. Fai's
21 position on Kashmir was always that Kashmir should essentially
22 vote for its own self-determination?

23 A. Over the last several years, that was certainly his
24 position, yes.

25 Q. Would you agree that Pakistan's policy was that --

1 MR. KROMBERG: Objection, Judge. Again, as the Court
2 mentioned, we're here on detention, and the Pakistani policy
3 does not seem to have anything to do with the detention hearing.

4 THE COURT: I --

5 MR. WAHID: Going to strength of case, Judge.

6 THE COURT: Well, there certainly is probable cause.
7 We've made a determination of that. So I don't know -- I'll let
8 you go a little bit further down this line, but this is a
9 hearing on the issue of detention, not a trial of the case.
10 Okay?

11 MR. WAHID: Understood.

12 BY MR. WAHID:

13 Q. Would you agree that the Pakistani government's policy on
14 Kashmir has not been in line with the idea of self-determination
15 but in line with the idea that Pakistan has a claim on Kashmir?

16 A. I think at various times various Pakistani politicians have
17 said differing things, but I can tell you that when ISI was
18 speaking with Dr. Fai, they talked about self-determination.

19 Q. Now, let me ask you some questions about your contact with
20 Mr. Fai.

21 Back on July 13th of this year, you had sent an e-mail to
22 Dr. Fai in which you reminded him of an incident where you had
23 come and visited him back in March of this year.

24 Do you recall that?

25 A. Yes.

1 Q. Okay. So going back to March, that was a reference to an
2 incident where Dr. Fai had come into the country, had been
3 searched at the airport, and a news article was found in his
4 luggage, correct?

5 A. It wasn't a news article. It was an excerpt of what looked
6 like a court filing from the Lahore High Court about the Raymond
7 Davis legal situation.

8 Q. And then you -- you got ahold of that. It somehow made its
9 way to you from customs --

10 A. Uh-huh.

11 Q. -- because it was photocopied, correct?

12 A. Customs gave me a photocopy of it, yes.

13 Q. Right. So then it made its way to you and you came to visit
14 Dr. Fai to ask him about that document?

15 A. Yes.

16 Q. And it was because it raised your attention in that it was
17 about Raymond Davis who was the -- that was the incident where
18 he's allegedly a CIA operative who shot two folks in Pakistan so
19 it raised your concerns, correct?

20 MR. KROMBERG: Objection, Judge. I don't see how this
21 has anything to do with detention.

22 MR. WAHID: It's going to risk of flight in a minute,
23 Judge.

24 THE COURT: Better be faster than a minute.

25 MR. WAHID: All right.

1 BY MR. WAHID:

2 Q. Do you recall that incident?

3 A. Yes, I do recall.

4 Q. All right. And he came -- you came to see him and he
5 cooperated with you and he showed you, because he had the
6 original of that document, he showed you that on the back of
7 that document it was actually an article about him or something
8 about him?

9 A. It was a photograph of him --

10 Q. Photograph of him.

11 A. -- or a photograph -- it was a photocopy of a photograph of
12 him, yes.

13 Q. And that's why he actually had it in his possession?

14 A. Yes.

15 Q. Then he actually communicated with you again later, and it
16 was in that July 13th e-mail when you asked him to meet with
17 you, correct?

18 A. Yes. I e-mailed him and asked him if we could sit down and
19 talk about the situation in Kashmir, and he responded that we
20 could.

21 Q. All right. And that was on July 13th. You asked to meet
22 with him on July 19th -- or before July 19th. Sorry.

23 A. On July 13th I asked him if he could meet with me the
24 following Friday or Monday, which was the --

25 Q. The 15th or the 18th.

1 A. -- 15th or the 18th, I believe. He told me he was out of
2 town until the 17th.

3 Q. He told you he was actually going to the UK and he would be
4 gone for those days and he would be back on the 18th?

5 A. I believe he said he was going to the UK and would be back
6 on the 17th and so we could meet on the 18th.

7 Q. All right. You in fact did meet with him on the 18th?

8 A. Yes.

9 Q. So he left and he came back --

10 A. Yes.

11 Q. -- after communicating with you?

12 A. Yes.

13 Q. Okay. And based on what happened in March, he knew that the
14 FBI was surveilling him, at least to some extent, because you
15 showed up at his door, correct?

16 A. I don't -- I don't claim to know what he knew. We were
17 asked to go talk to him specifically about the Ray Davis thing
18 because customs found it in a secondary examination of his
19 luggage.

20 Q. In March when you saw him, did you ask him about his
21 contacts in Pakistan at that time?

22 A. Yes.

23 Q. Okay. So he knew he was at least being -- at least as of
24 March he knew he was being looked at by the FBI, correct, at
25 least as to his contacts in Pakistan because you asked him about

1 it?

2 A. I imagine he probably suspected he was on our radar, or if
3 not our radar, the U.S. government's radar.

4 Q. So then after you say you want to speak to him on July 13th,
5 he says he's going to go to the UK. He actually goes to the UK
6 and comes back and actually meets with you at 10:30 on the
7 morning of July 18th?

8 A. Yes.

9 Q. And then that evening he -- are you aware that he made no
10 attempt to flee or anything like that after leaving you the rest
11 of that day?

12 A. Yes, I'm aware of that.

13 Q. In fact, he was at his home that evening and he was being
14 surveilled at his home, correct?

15 A. He went out to dinner with some friends and his family and
16 then he returned home, yes.

17 Q. In fact, he noticed a suspicious car outside and he called
18 the police. Do you know about that?

19 A. I don't know if it was Dr. Fai or if it was his children. I
20 think it was a family member.

21 Q. All right. So then the police came actually to his house
22 and he pointed out the car that he thought was the suspicious
23 car?

24 A. I don't know the sequence of the encounter with Fairfax
25 County.

1 Q. All right. That car was actually law enforcement, correct?

2 A. Yes. It was one of us.

3 Q. It wasn't actually until the next morning when he was on his
4 way to work that he was in fact arrested on this matter?

5 A. I don't know if he was on his way to work. I think he was
6 driving his wife to Metro possibly, but, yes, we arrested him
7 the next morning.

8 Q. But at no point, even after the point he's arrested, was he
9 making any efforts to flee or evade law enforcement?

10 A. Correct.

11 MR. WAHID: All right. Thank you.

12 THE COURT: Okay.

13 MR. KROMBERG: Judge, if I may.

14 **CROSS-EXAMINATION**

15 BY MR. KROMBERG:

16 Q. You were asked about the interview on July 18th, but you
17 weren't asked about -- much about it, just that it happened.

18 Was there anything different about what happened in the
19 interview on July 18th from the -- what happened at the
20 interview on July 19th when he was arrested?

21 A. He lied to me on the 18th.

22 Q. Did he tell you that he was affiliated with the ISI?

23 A. He did not.

24 Q. Did he tell you about his handlers?

25 A. He specifically denied knowing two of them and identified a

1 third but told me they hadn't spoken in more than ten years.

2 Q. So on the 18th he didn't know that you knew that those were
3 his handlers?

4 A. I don't know what he knew, but he did not tell me the truth
5 about knowing them by either name or photograph.

6 MR. KROMBERG: Thank you. Nothing further, Judge.

7 THE COURT: Okay. You may step down. Thank you.

8 (Witness stands down.)

9 Any other proffers or evidence that the defendant
10 wants -- well, we're going to have one counsel handle the
11 proffers or evidence. If you want to -- I'll let you do the
12 argument, but ...

13 MR. WAHID: Yes, Judge. Based on the statement that
14 the government referred to of Dr. Fai, when he spoke at events,
15 he wrote his own speeches, according to him. He chose his own
16 words. He again told them that the ISI did not tell him what to
17 say or did they have any right of approval over the materials
18 that he prepared.

19 He went on to acknowledge that he was dependent on the
20 ISI for support but maintained that the ISI did not keep him
21 from thinking independently in any way and doing what he felt
22 was best for the Kashmiri people. Dr. Fai sometimes ignored the
23 talking points provided to him by the ISI, and at other times he
24 would use them often without -- with minor rephrasing.

25 Dr. Fai has spoken publicly on umpteen occasions and

1 has very often advocated publicly for positions that are not in
2 conformity with the Pakistani government's policy on Kashmir.
3 He has been known to call to the events that he puts forth some
4 of the most staunch pro-India speakers on the issue of Kashmir
5 and has presented all sides of the argument at every opportunity
6 he can on the issue of Kashmir for the sole purposes of
7 furthering the goals and the aspirations of the people of
8 Kashmir. Thank you.

9 THE COURT: Mr. Kromberg, I'll hear any argument you
10 want to make on the issue of detention, and then I'll hear
11 argument from the defense.

12 MR. KROMBERG: Thank you, Judge.

13 Based on the information in the complaint and to a
14 large degree conceded by Mr. Fai after his arrest, he's been an
15 agent of the Pakistani intelligence service for more than
16 20 years. As such, it is likely that the Pakistani intelligence
17 service has an obligation to try to protect Mr. Fai from getting
18 prosecuted for being their agent. As a result, he likely has a
19 network of support internationally from the secret service of a
20 foreign government.

21 He agrees, there's no doubt at this point, that he has
22 been affiliated with the Pakistani Inter-Services Intelligence
23 Directorate agency for, he says, 15 years; we say more than 20.
24 Either way, he's been in contact with his handlers hundreds or
25 thousands of times. The ISI has facilities throughout Europe.

1 THE COURT: I'm sorry. The ISI has what?

2 MR. KROMBERG: Has facilities throughout Europe.

3 As we state in the complaint and as Special Agent
4 Linden explained in the complaint, there are the equivalent
5 Kashmir -- Kashmiri centers in London and Belgium. He could
6 obtain assistance from the ISI without going to Pakistan. He's
7 gotten millions of dollars over the last 20 years from the ISI
8 in the United States of America through a network of supporters,
9 through a network of people used by Zaheer Ahmad to transfer ISI
10 money to Fai. That network -- Zaheer Ahmad is still free.
11 There's no reason to believe that Zaheer Ahmad cannot get money
12 to Mr. Fai even to this day in America or elsewhere around the
13 world.

14 The complaint affidavit explains Zaheer Ahmad obtained
15 money -- arranged for thousands of dollars to be passed to
16 Mr. Fai when Mr. Fai was in Turkey. There's no doubt that,
17 through the ISI, Mr. Fai can get assistance financially and
18 otherwise all around the world. Mr. Fai has traveled
19 internationally, by my count, approximately 30 -- over 35 times
20 in the past five years. He's a seasoned traveller. He's
21 comfortable traveling.

22 He left Kashmir when he was in trouble with the
23 government in Kashmir and he never returned. In light of his
24 past history of leaving Kashmir to avoid prosecution in Kashmir,
25 in light of his ability to get --

1 THE COURT: What evidence is there of that?

2 MR. KROMBERG: In March 2007 -- do we have -- I don't
3 recall whether it's in the affidavit or not, but he told that to
4 Special Agent Linden, that he fled Kashmir to Saudi Arabia when
5 he learned he would be arrested in Kashmir. And by his own
6 account, he has not returned to Kashmir since that time.

7 He's a traveler. He has access to help from a foreign
8 intelligence service. He's been an agent of a foreign
9 intelligence service. And even if, as the defense suggests,
10 everything he does is not for the foreign intelligence service,
11 it's undisputed that some of the things he does is for the
12 foreign intelligence service.

13 As a result, the foreign intelligence service likely
14 has obligations to the defendant and is likely to try to help
15 him; therefore, he is a risk of flight and we cannot assure that
16 he would be around for trial. Thank you, Judge.

17 THE COURT: Ms. Ginsberg.

18 MS. GINSBERG: Your Honor, a number of things.

19 I think Mr. Kromberg's wild speculation that the ISI
20 has some obligation to protect Dr. Fai is totally unfounded.
21 It's mere speculation. The government has been listening to
22 Dr. Fai's conversations with the Pakistanis, numerous FISA
23 warrants have been issued. If there had ever been a single
24 conversation which would suggest that Dr. Fai was acting as
25 their agent and that were he to get in trouble that they would

1 protect him, I am absolutely certain that Mr. Kromberg would
2 have told you about it.

3 There is no evidence whatsoever to support the
4 speculations of what might happen in some foreign country. In
5 fact, the only public statements, the only public statements
6 that the Pakistani government has made since Dr. Fai's arrest is
7 to deny the allegation strenuously and to -- to accuse the
8 United States of bringing these charges in retaliation for
9 conduct of the Pakistani government with respect to American
10 officials. So there is absolutely -- there's no basis for that
11 kind of inflammatory accusation and speculation.

12 Dr. Fai has been on the government's radar for a very
13 long time. He has traveled always in the open. In fact, Agent
14 Linden conceded, I think, that he knew that he was on the radar.
15 She asked to meet with him. He was leaving the country. He was
16 going to London. She asked him to meet with him {sic}. He
17 didn't have any hesitation about meeting with her. He said I'll
18 be happy to meet with you, but I'm going to London. I'll be
19 back in four or five days. I will meet you the day after I
20 return. That's exactly what he did.

21 And he met with the agent. He was asked about the
22 specific people who the government claims are his handlers who
23 he's been interacting with for a number of years. He certainly
24 knew, even though he denied having contact and having knowledge
25 of these people, he certainly knew that the government suspected

1 that he had and there was an agent who was positioned outside
2 his home that evening all through the night watching his house.

3 Dr. Fai made no efforts whatsoever to flee and there's
4 absolutely no reason to think that he would. In fact, were he
5 to run from these charges, he would essentially be abandoning
6 his life work on behalf of free Kashmir.

7 With -- just briefly with regard to the strength of the
8 government's case. I imagine Your Honor had a chance to read
9 the affidavit. There are a lot of documents that were either
10 seized or phone calls that were overheard. They -- Your Honor,
11 they are part of a bigger picture. And while they certainly
12 appear to establish that Dr. Fai was receiving funds from
13 someone in Pakistan who was affiliated with the ISI, they do not
14 by any means establish that the positions he advocated publicly
15 and the positions he advocated with members of Congress, heads
16 of state, the President of the United States, presidents of
17 other countries, there is nothing in that affidavit from which
18 this Court can conclude that he ever advocated a position that
19 was solely for the benefit of Pakistan.

20 And to the extent that his public writings and his
21 public speaking is inconsistent, is totally inconsistent with
22 that, there is a legitimate question as to the degree of the
23 government's -- the likelihood of success of the government's
24 case.

25 I will concede that it is very -- the government has a

1 very, what I consider, strong case with respect to his making a
2 false statement to a federal agent, but, Your Honor, he is
3 facing -- this is a man who has no criminal record, is
4 essentially a public figure who is facing two charges with
5 maximum penalties of five years each. So the incentive to flee
6 in this case where his whole professional, his whole life's work
7 is at issue is extremely, extremely low.

8 I think the evidence of the fact that he could
9 certainly have suspected he was under investigation, was out of
10 the country and could very easily, if it was his desire, could
11 very easily have stayed outside of the country, is very strong
12 evidence that he has no intent to flee.

13 With respect to the pretrial services report, we
14 would -- we would adopt the recommendations of that report, but
15 I would like to bring to the Court's attention, there's
16 information in here which we believe to be incorrect under his
17 history of residence and family ties. Apparently, the pretrial
18 services officer's search of public records indicated that he
19 came to the country in March of 1989 and became a citizen on
20 October 13th of 1994. He was -- Dr. Fai has been living in the
21 United States since 1990 -- I'm sorry -- since 1980. He
22 attended Temple University there. He met his wife in the early
23 '80s there.

24 THE COURT: It does say that in the first sentence --

25 MS. GINSBERG: In the first sentence.

1 THE COURT: -- that he came to the United States in
2 1980.

3 MS. GINSBERG: But he -- he -- he was a resident of the
4 United States. He married and had his first child in 1988, a
5 second child. Both of his children are U.S. citizens and his --
6 he and his wife were both naturalized in about 1986. They've
7 lived in Virginia since 19 -- approximately 1990. They've had
8 very stable residences. They owned one home which they sold and
9 purchased the home that they currently live in and have been
10 members of this community since that time.

11 They have two children who are college students. One
12 of whom is at Stanford and one of whom just graduated from
13 Ohio -- I think Ohio State and is going on to be -- to
14 veterinary school.

15 Your Honor, there is tremendous support for Dr. Fai in
16 this community, locally and in the United States in general, and
17 any of number of people who would come forward and offer their
18 support for him and would assume responsibilities to the Court
19 should the Court find that necessary with respect to his
20 release, but his wife is a qualified third-party custodian.
21 She's a federal government employee, a GS-13. Has worked for
22 the government for five or six years.

23 The home that they own has equity of approximately at
24 least \$500,000, and I have verified that by looking at their
25 mortgage statement and the tax records. So -- and they are

1 prepared to post their home as collateral for any bond. Two or
2 three additional people who are friends of Dr. Fai's have
3 indicated that they also would be willing to post their homes as
4 collateral if the Court were to feel that was necessary. I
5 don't think that anything like that is necessary.

6 The government has Dr. Fai's passport. His wife is
7 willing to surrender her passport. And in the -- in the -- to
8 the extent that the Court believes that all of those conditions
9 are not sufficient, Dr. Fai can be placed on house arrest with
10 electronic monitoring so that the government would know that he
11 is not leaving the country. He's not leaving the area, he's not
12 even leaving his home.

13 This is a case where, frankly, I'm very surprised to
14 hear the government ask for detention. I think Dr. Fai, as part
15 of his work, was a very frequent traveler, but that has by no
16 reason any indication if he was told to remain in this country,
17 there's no indication of the fact that he has traveled in the
18 past and has contacts around the world that would indicate that
19 he would not observe the Court's order.

20 When he was questioned by the FBI, he invited the agent
21 into his home. He didn't have any obligation to speak with the
22 agent in March of this year. When she asked him to meet with
23 him {sic}, he was more than happy to meet with her. This is a
24 man who's shown nothing but respect for law enforcement and has
25 earned the respect, at least until now, of literally heads of

1 state. And for this --

2 THE COURT: Well, it's a little bit of an overstatement
3 to say nothing but respect when the allegations are that he
4 wasn't truthful to law enforcement officers.

5 MS. GINSBERG: I said up to this point. I understand.
6 He has made -- he has made false statements to a law enforcement
7 agency, but there are persons around the world who have credited
8 the veracity of statements that he has made about the plight of
9 Kashmir and his intentions with respect to assisting the
10 Kashmiri people that have been credited by people who have great
11 responsibilities in this country and in others.

12 I think that there is absolutely no reason to believe
13 that with any number of these conditions that he would not
14 observe all of the -- observe all of the requirements that the
15 Court would impose.

16 THE COURT: Mr. Kromberg, I'll give you the last say
17 since it's your burden.

18 MR. KROMBERG: Thank you, Your Honor.

19 I think Your Honor's point about the nothing but
20 respect is -- remark is a key one. In April -- in March of
21 2010, the Justice Department sent a letter to Mr. Fai saying --
22 asking if he was an agent of a foreign -- entity of a foreign
23 government, giving him another shot to come clean, and he wrote
24 back and said he has no contact. He's not an agent, he has no
25 contact, he doesn't get funding from any foreign government.

1 All of these people who support him didn't know that he
2 was getting his money from the ISI and taking direction from the
3 ISI on many things. He was living a lie. When he spoke to
4 politicians, when he spoke to members of Congress, when he spoke
5 to heads of state, he didn't say I get my money from the ISI.
6 He said I get my money from an indigenous American organization.
7 Well, it is an indigenous American organization that is funded
8 by the ISI. The bulk of its funding comes from the ISI. The
9 bulk of its funding has always come from the ISI. It was set up
10 by the ISI. That's not showing respect to law enforcement, to
11 heads of state, to members of Congress, to his own board of
12 directors, to any of his supporters.

13 The fact that his house has equity in it is interesting
14 but not particularly helpful because the Foreign Agents
15 Registration Act is a violation. It is a specified unlawful
16 activity under the money laundering laws, and as a result, as
17 noted in the complaint, the government is seeking forfeiture of
18 the proceeds of the violation.

19 The proceeds of the violation consists of millions of
20 dollars that Mr. Fai got from the ISI over the past 20 years.
21 There has been *lis pendens* filed on the Fai house so that money
22 is not available to be posted. I don't think any money that
23 Mr. Fai has is useful for being posted. If there is any -- if
24 the Court goes down that road, the government is going to
25 request a Nebbia hearing to find out the source of the money,

1 because after 20 years of financial support from the ISI, we're
2 interested in where the money is coming from now.

3 Thank you, Judge.

4 THE COURT: Mr. Fai, would you please rise.

5 Sir, having heard the evidence that's been presented
6 here today and having reviewed the information that's contained
7 in the pretrial services report and the affidavit in support of
8 the criminal complaint, I do find that there are certain
9 conditions that I can set that would satisfy me that you would
10 appear at further proceedings and that the safety of the
11 community could be assured.

12 You need to understand that these are conditions that
13 the Court will take very seriously, that if there are any
14 violations of any of these conditions that we set out, they will
15 be acted on swiftly and firmly. That is, you'll be brought back
16 into court either through a summons or through an arrest warrant
17 and your right to remain free pending trial very well may be
18 taken away. So you need to understand that these are conditions
19 that need to be complied with fully and completely.

20 You won't be able to be released immediately because
21 some of these conditions will take some time in order to
22 establish, but the process will start soon such that you will be
23 able to be released once these conditions have been satisfied,
24 but, again, all of these conditions will have to be satisfied
25 before you're released. And once they are, you will be able to

1 be released.

2 I am going to allow you to be released on an unsecured
3 bond in the amount of \$100,000. It will have to be secured by
4 you and by the third-party custodian, your wife. I will talk
5 about that in a minute. You'll be released subject to pretrial
6 supervision. You'll be released to and must reside with your
7 wife, the third-party custodian, and she must also surrender her
8 passport. I'm going to make that as a requirement as well.

9 You're not to move from your current residence without
10 prior approval of the Court or pretrial services. I'm going to
11 require you to be on home detention with electronic monitoring.
12 There'll be time-outs that will be allowed for you to meet with
13 your counsel or for court appearances, things like that, but
14 other than that, you're going to be on home detention.

15 You'll have to be set up with electronic monitoring
16 that will show that you're remaining where you're supposed to be
17 remaining, and we'll be alerted if there's any movement outside
18 of the home detention area. Obviously, your travel will be
19 restricted to the Washington, D.C. metropolitan area without
20 prior approval of the Court or pretrial services.

21 I understand you have surrendered the passport. Is
22 that -- that was taken into custody; is that correct?

23 MS. GINSBERG: I believe the government seized his
24 passport.

25 MR. KROMBERG: I believe that's correct, Your Honor.

1 THE COURT: Okay. Well, to the extent that you have
2 any other passports or any other travel-related documents, they
3 must be turned over before you're released. You're not to
4 obtain any new passport or any other travel-related documents
5 while you're on supervision. You're to have no contact with the
6 codefendants or potential witnesses in this case unless you're
7 in the presence of defense counsel.

8 Do you understand that?

9 That's no contact whatsoever. It doesn't mean
10 telephone conversations, face-to-face meetings. It means using
11 intermediaries to get information back and forth. No e-mails,
12 text messages, Facebook, any of that kind of stuff. It's no
13 contact whatsoever.

14 Do you understand that?

15 Once those conditions have been satisfied, you'll be
16 able to be released from custody.

17 Anything else in this matter?

18 MR. KROMBERG: Judge, two things on those conditions.

19 One, I hoped you could add no contacts with any
20 representatives of any foreign government; and, second, when --

21 MS. GINSBERG: Your Honor, except through his
22 attorneys.

23 MR. KROMBERG: Right. I don't have any objection to
24 that.

25 THE COURT: Okay. I'll add no contacts with

1 representatives of a foreign government except through his
2 attorneys.

3 MR. KROMBERG: And the other issue, Judge, was on the
4 home detention electronic monitoring. This issue has come up
5 before. And with -- and pretrial services works very hard, but
6 they may not react as fast as the FBI would react in a case
7 where someone is not where they're supposed to be. We ask that
8 pretrial services be directed to immediately notify FBI, a
9 contact that we'll provide from the FBI if -- if the defendant
10 has strayed from where he is supposed to be.

11 THE COURT: I'm let you deal with -- I mean, I
12 probation and pretrial services does a very good job on what
13 they do. I'm sure if you explain to them the circumstances,
14 that they will alert who needs to be alerted on any violations.
15 But I'm fairly confident that Mr. Fai is not going to be
16 violating any of the conditions of this -- that I've set out
17 here today because I think he is capable of understanding that
18 if he does so, he'll be brought back into court and his right to
19 remain free will be taken away. So we do take those very
20 seriously.

21 MS. GINSBERG: Judge, we have no objection to the
22 pretrial services making immediate notification.

23 THE COURT: I suspect they would without anybody --

24 MS. GINSBERG: Telling them to.

25 THE COURT: -- asking them to do it, but that should be

1 part of what we deal with.

2 Okay. Thank you. I appreciate everybody's patience.

3 Court will be in recess.

4 * * *

5 (Proceedings concluded at 5:40 p.m.)

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CERTIFICATION

I hereby, this 12th day of September 2011, that the foregoing is a correct transcript from the recording provided by the court. Any errors or omissions are due to the inability of the undersigned to hear or understand said recording.

/s/

Tracy Westfall, RPR, CMRS, CCR